XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. No. 229/2002 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश |
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**Criminal Appeal No. 229/2002**

**APPELLANT** Khadkhud, son of Suiya, aged 40 years, occupation- agriculture, resident of village Jargim, P.S. Shankargarh, Distt. Sarguja (C.G.)

**Versus**

**RESPONDENT** State of Chhattisgarh, through Police Station, Shankargarh, Distt. Sarguja (C.G.)

**D:B. : Hon'ble Shri L.C. Bhadoo and Hon'ble Shri Dhirendra Mishra, JJ.**

**29-6-2007**

Shri Rajesh Jain, Advocate, for the appellant.

Shri Akhil Mishra, Panel Lawyer, for the respondent/ State.

Arguments heard.

**ORAL JUDGMENT**

**Per L.C.Bhadoo, J. :**

This appeal is directed against the judgment of conviction and order of sentence dated 13-2-2002 passed by the 3rd Addl. Sessions Judge, Ambikapur (Sarguja) in S.T. No. 134/2000, whereby the learned Additional Sessions Judge after holding the accused appellant guilty for commission of offence under Section 302 of I.P.C., sentenced him to undergo imprisonment for life.

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आदेश पत्रक (पूर्वानुबद्ध)

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| | Case of the prosecution, in brief, is that deceased Kondra Nageshia and accused Khadkhud were residents of the same village. The accused purchased one chicken from the deceased in consideration of Rs. 15/-. The deceased was demanding the money and used to abuse the accused. On the date of incident also, deceased Kondra demanded the money from the accused and abused him, therefore, the accused attacked the deceased with the back side of spade, as a result of which, Kondra sustained injuries on the head and died spontaneously. The matter was reported by Baleshwar, son of the deceased in the police Station Shankargarh under Merg intimation Ex. P-2, based on that, F.I.R. Ex. P-2 was registered for commission of offence under Section 302 of I.P.C. The Investigating Officer left for the scene of occurrence, after giving notice to Panchas, prepared inquest Ex. P-5 on the body of Kondra. Body of Kondra was sent for post mortem examination to the Primary Health Centre, Shankargarh under Ex. P-14 where Dr.(Smt.) J. Kujur prepared the report Ex. P-14-A in which she opined that cause of death was shock and haemorrhage as a result of head injury and death was homicidal in nature. During investigation, the accused gave memorandum Ex. P-8 regarding the place where he kept the spade, the weapon of | |

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आदेश पत्रक (पूर्वानुबद्ध)

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offence, in pursuance of that, the spade was recovered under Ex. P-9. Spade was sent for chemical examination to the Forensic Science Laboratory, Sagar from where report Ex. P-20 was received. After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Ambikapur who in turn committed the case to the Sessions Judge, Ambikapur from where learned 3rd Additional Sessions Judge, Ambikapur received the case on transfer for trial.

Prosecution in order to establish the charge against the accused examined 14 witnesses. Statement of the accused was recorded under Section 313 of Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and he has been falsely implicated in the crime. Learned Additional Sessions Judge after hearing the counsel for the respective parties, convicted and sentenced the accused as aforementioned.

We have heard Shri Rajesh Jain on behalf of the appellant and Shri Akhil Mishra on behalf of the State.

Shri Rajesh Jain has not disputed the homicidal death of Kondra. Moreover, from the evidence of P.W. 1 Baleshwar and P.W. 2 Bandhan, it is established that the accused made extrajudicial confession before them regarding commission of the crime by him. The above evidence of these witnesses is

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corroborated by the medical evidence and post mortem report Ex. P-14-A that the deceased sustained head injuries as a result of which, he died. Therefore, it is established that the death of Kondra was homicidal in nature.

As far as involvement of the accused in crime in question is concerned, P.W. 1 Baleshwar, son of the deceased has stated that when he came to know about the incident, he went to the accused and enquired from him, then he said that his father was demanding money, when he did not give money, he started abusing, therefore, he attacked him with the back side of the spade. P.W. 2 Bandhan has also stated that the accused made extrajudicial confession before him and other villagers that he attacked the deceased with the spade. This witness has not been cross-examined on this aspect. The other witnesses before whom the accused made extrajudicial confession have turned hostile but based on the evidence of these two witnesses that the accused made extrajudicial confession before them, it is established that the accused made extrajudicial confession before them. In the cross-examination, P.W. 1 Baleshwar, even though he is son of the deceased, the prosecution has not been able to bring on record any material which demolishes or discredits the evidence of this witness. Moreover, the weapon of offence, the

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**आदेश पत्रक (पूर्वानुबद्ध)**

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spade was recovered under Ex. P-9 at the instance of the accused based on his memorandum Ex. P-8 and the same was sent to Forensic Science Laboratory, Sagar for chemical examination from where the report has been received that there was blood on the spade. This fact corroborates the evidence of P.W. 1 Baleshwar and P.W. 2 Bandhan. Therefore, it is established that the accused was author of the crime in question.

Shri Jain argued that since the deceased came and demanded money and abused the accused, therefore, in the fit of anger, the accused picked up the spade and attacked him on head, and he had no intention to cause death of Kondra, therefore, offence against the accused does not travel beyond Section 304-II of I.P.C.

On the other hand, Shri Mishra supported the judgment of the trial Court.

It is true that in the evidence of P.W. 1 Baleshwar itself, it has come that in the extrajudicial confession, the accused disclosed that his father came, demanded money and started quarreling, therefore, the he picked up the spade and attacked the deceased from back side of the spade. The post mortem report shows that repeated blows were given by the accused as there was a lacerated wound in size of 1 x 1 x ½"

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**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश |
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| | in the left occipital region, there was swelling also, there was depressed fracture of left temporal region just behind and above the left ear and multiple fractures were there in left temporal, occipital and parietal bones, there was abrasion in size of 3" x 2" over left shoulder. The manner in which the accused attacked the deceased with the deadly weapon spade, looking to the nature of the weapon and the place where the accused attacked i.e. head, the vital part of the body and the force with which the accused attacked as a result of which the deceased sustained depressed fracture of left temporal region, multiple fractures in left temporal, occipital and parietal bones, as the accused purchased chicken from the accused and when deceased demanded money which was not given by the accused and in that process, if any hot words were said by the deceased without attacking the accused, there was no occasion for the accused to enrage on that ground because he was to pay money to the deceased, and then the accused attacked the deceased mercilessly with a deadly weapon on head as a result of which most of the bones of head were fractured and there was depressed fracture and multiple fractures in left temporal, occipital and parietal bones resulting into instant death of the deceased, therefore, the manner in which the accused attacked with intention to | |

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| | cause death of Kondra was writ large, as such, we do not find any substance in the argument of the learned counsel for the appellant.<br>In the result, the appeal being devoid of merit is liable to be dismissed and it is hereby dismissed.<br>Sd/-<br>L.C.BHADOO<br>Judge<br>Sd/-<br>DHIRENDRA MISHRA<br>Judge | |

R/—